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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,845	12/09/2003	Arnold H. Bramnick	BOC9-2003-0040 (410)	5227
40/987 7590 10/16/2008 AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188				
EXAMINER JOSEPH, TONYA S				
ART UNIT		PAPER NUMBER		
3628				
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/730,845

Applicant(s)

BRAMNICK ET AL.

Examiner

TONYA JOSEPH

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/17/2008 has been entered.

Status of Claims

2. Claims 1-15 have been previously examined. Claims 2-15 have been cancelled. Claim 1 has been amended. No claims have been added. Thus claim 1 remains pending and is presented for examination.

Response to Arguments

3. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites the limitation "each element" in line 18. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
9. Claim 1 is directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process should either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes must positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus the accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claim 1 identifies neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slivka et al., U.S. Publication No. 2003/0225600 in view of Ingram, "Travellers Leave for Portugal after 24- hour Wait for Plane", The Globe and Mail (Canada), June 26, 1986, pg. A21 and further in view of Barnes et al. U.S. Pre-Grant Publication No. 2004/0010427 A1.

12. As per Claim 1, Slivka teaches determining real time a plurality of alternative flights for said passengers offered by an airline operating said cancelled flight and other airlines based on databases including flight inventory data and reservations data on said canceled airline and other airlines (see para. 44, 48; 32-33 and para. 15); obtaining real time passenger data for each of said passengers from databases (see para. 36) including a customer relationship management (CRM) database, an accounting database, and a loyalty or frequent flyer database (see para. 24 and 38-39, Examiner is interpreting the passenger prioritization rules, the passenger fare calculator and the frequent flyer rules which are rules determined by the rules engine and stored in a database as a customer relationship management (CRM) database, an accounting database, and a loyalty or frequent flyer database respectively), wherein said passenger data comprises a passenger re-booking cost (see para. 39) and a passenger lifetime value (see para. para. 24), wherein the passenger re-booking cost includes a cost to

said airline which has cancelled the flight to re-book said passenger on one of said alternative flights offered by said other airlines (see para. 14-15); and wherein the passenger lifetime value includes at least one of a frequent flyer status of the passenger and a ticket purchase history of the passenger (see para. 35); weighting passenger data using a predetermined set of weights determined based upon expressed preferences of said airline (see para. 24-25, Tables 1-2 and para. 40-42); for each of said passengers, determining a value score' based upon the weighted passenger data elements (see para. 44); comparing said weighted scores for said passengers with one or more rules wherein the rules include at least one of a descending revenue impact on the airline, a lifetime value of the passenger, and a most favorable value score; and offering at least a portion of said alternative flights to said passengers based upon said comparing step (see para. 24, 35, 37 and 44).

Slivka does not explicitly teach the limitation taught by Ingram and any accommodation costs associated with each one of said alternative flights offered by said airline including hotel and meal charges, of accommodating the passenger until said alternative flight offered by the airline is available (see para. 3 and 8-9). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the invention of Slivka to include the teachings of Ingram to accommodate disrupted passengers and maintain customer satisfaction. Slivka in view of Ingram does not explicitly teach the limitation taught by Barnes wherein passenger data comprises a remaining unflown ticket value (see para. 39). It would have been prima facie obvious to one of ordinary

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skill in the art at the time of invention to modify the methods of Slivka and Ingram to include the teachings of Barnes to issue a partial refund to a customer.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TONYA JOSEPH whose telephone number is (571)270-1361. The examiner can normally be reached on Mon-Fri 7:30am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tonya Joseph
Examiner
Art Unit 3628

/JOHN W HAYES/
Supervisory Patent Examiner, Art Unit 3628